IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 8368 OF 2005.

The State of Maharashtra. ... Applicant.

Versus.

Santosh Gopal Birwadkar & others. ... Respondents.

Mrs.U.V.Kejariwal, A.P.P. for the Applicant.

Shri J.K.Tendulekar for the Respondents Nos.1 to 4.

CORAM : ABHAY S.OKA, J.

DATED : 19th December, 2006.

P.C.:

1. Heard the learned A.P.P. for the State and the learned Advocate appearing for the Respondent. During the course of recording of evidence of P.W.2 Baburao Dadasaheb Jadav, an attempt was made by the Public Prosecutor to produce a photograph. An objection was raised by the Respondent on the ground that the photograph does not form part of the charge-sheet and even a copy thereof is not supplied to the accused in advance. The learned trial Judge by order dated 19th July 2005 declined to allow production of photograph on the ground that the accused will be taken by surprise.

2. The learned A.P.P. submitted that the trial Court was not powerless to permit production of the documents and the provisions of the Code of Criminal Procedure, 1973 do not create a bar.

3. It is an admitted position that the document

which was sought to be produced was not filed along with the charge sheet and a copy of the said document was not supplied to the accused. If the Applicant was seeking production of the photograph, the Applicant should have made appropriate application in writing before the trial Court so that the Respondent-accused could have dealt with the ground on which the belated production of the document was sought. However, that was not done. The order impugned has been passed on oral prayer of the learned Public Prosecutor. In my view, in the interests of justice, the impugned order deserves to be set aside with a liberty to the Applicant to take out appropriate application before the trial Court.

4. Hence the following order is passed:

i) The order dated 19th July 2005 is quashed and set aside.

ii) It will be open to the Applicant to make an application before the trial Court within a period of four weeks from the date of production of writ of this order before the trial Court seeking production of additional documents. If such Application is made by Applicant within the stipulated period of four weeks, the trial Court will

decide the same in accordance with law after permitting the Respondent to file a reply. If such application is not made within the stipulated time, the trial Court will proceed to record further evidence without allowing the Applicant to rely upon the document which was sought to be produced.

Judge.